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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/675,363
Filing Date: September 30, 2003
Appellant(s): COLIN ET AL.

Howard L. Speight
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/9/2009 appealing from the Office action mailed 2/26/2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2004/0196785	Janakiraman et al.	04-2003
2003/0123466	Somekh et al.	07-2003
2002/0075873	Lindhorst-ko et al.	06-2002

6252849 Rom et al. 06-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. Claims 1, 3, 4, 6, 8, 9, 11-12, 14, 16, 17, 19, 20, 22, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Somekh et al., hereinafter Somekh, (US2003/0123466) in view of Rom et al., hereinafter Rom (US6252849).

Regarding claim 1, Somekh discloses a modem relay over packet based network (see Somekh paragraph 21) comprising: (a) transmitting data packages (see Somekh paragraph 217 data packets) from a plurality of data sources (see Somekh figure 11 box 524) in a first computer network to a first gateway (see Somekh paragraph 217 gateway and figure 7 box 36a); (b) transmitting the data packages from the first gateway to a second gateway (see Somekh paragraph 217 data signals received by gateways 36a and 36b are optionally forwarded to the other gateway in data packets); (c) transmitting the data packages from the second gateway to a plurality of data destinations (see Somekh figure 14 box 812 and paragraph 217) in a second computer network(see Somekh paragraph 217 gateway and figure 7 box 36b); (d) transmitting acknowledgement messages from the data destinations to the second gateway (see Somekh paragraph 226 modem 32b will respond with frames to each frame transmitted by gateway); (e) generating messages (see Somekh paragraph 230 a packet which

reports the delay due to network being still in the connection establishment negotiation stage) at the second gateway and reception of acknowledgement messages by the second gateway based at least in part on the reception of acknowledgement messages by the second gateway (see Somekh paragraph 228 when gateway 36B receives packet before the connection establishment negotiation stage on network is completed, gateway optionally waits to the end of the negotiation stage before transmitting frame). (f) transmitting the messages from the second gateway to the first gateway (see Somekh paragraph 230 gateway 36B transmitting to gateway 36A a packet which reports the delay due to network being still in the connection establishment negotiation stage).

Somehk disclose all the subject matter of the claimed invention with the exception of: • Pause message

Rom from the same or similar fields of endeavor teaches the use of: Pause frame is provided to an information packet source by a downstream destination to inhibit transmission of information packets such as information frames by the information packet source to the downstream destination for a specified period of time (see Rom col. 5 lines 8-12).

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the pause frame as taught by Rom in modem relay over packet based network of Somekh in order to enhance system efficiency by implementing flow control and providing a control signal (see Rom col. 1 line 51 - col. 2 line 6). Regarding claim 3, Somekh teaches further comprising the step of: (g) transmitting the

pause messages from the first gateway to the plurality of data sources (see Somekh paragraph 228 gateway 36A repeatedly transmits frames with guess values to modem 32A in order to stall the connection on the network and figure 11 illustrate more that one customers terminals).

Regarding claim 4, Somekh teaches step (a) is performed by a plurality of sending tasks created by the data sources (see Somekh paragraph 258 a plurality of customers, and transmit to each other signals they receive on their twisted pairs and figure 11 box 524).

Regarding claim 6, Somekh teaches the first gateway includes an input task and an output task, the second gateway includes an input task and an output task, step (b) is performed by the output task of the first gateway (see Somekh paragraph 217 data signals received by gateways 36a and 36b are optionally forwarded to the other gateway in data packets), steps (c) and (e) are performed by the input task of the second gateway (see Somekh paragraph 217 data signals received by gateways 36a and 36b are optionally forwarded to the other gateway in data packets), and step (f) comprises transmitting the pause messages from the output task of the second gateway to the input task of the first gateway (see Somekh paragraph 228- 230).

Regarding claim 8, Somekh teaches further comprising the steps of: (g) sending messages with data package transfer information from the data sources to the first gateway (see Somekh paragraph 258 a plurality of customers, and transmit to each other signals they receive on their twisted pairs and figure 11 box 524); (h) sending a message with the data package transfer information from the first gateway to the

second gateway (see Somekh paragraph 217 data signals received by gateways 36a and 36b are optionally forwarded to the other gateway in data packets); (i) sending messages with the data package transfer information from the second gateway to the data destinations (see Somekh figure 14 box 812 and paragraph 217); and (j) checking the data package transfer information at the data destinations (see Somekh paragraphs 291 and 293).

Regarding claim 9, Somekh teaches computer program, stored on a tangible storage medium, for transferring data between computer systems, the program including executable instructions (see Somekh paragraph 261 software) that cause one or more computers to: (a) transmitting data packages (see Somekh paragraph 217 data packets) from a plurality of data sources (see Somekh figure 11 box 524) in a first computer network to a first gateway (see Somekh paragraph 217 gateway and figure 7 box 36a); (b) transmitting the data packages from the first gateway to a second gateway (see Somekh paragraph 217 data signals received by gateways 36a and 36b are optionally forwarded to the other gateway in data packets); (c) transmitting the data packages from the second gateway to a plurality of data destinations (see Somekh figure 14 box 812 and paragraph 217) in a second computer network(see Somekh paragraph 217 gateway and figure 7 box 36b); (d) transmitting acknowledgement messages from the data destinations to the second gateway (see Somekh paragraph 226 modem 32b will respond with frames to each frame transmitted by gateway); (e) generating messages (see Somekh paragraph 230 a packet which reports the delay due to network being still in the connection establishment negotiation stage) at the

second gateway and reception of acknowledgement messages by the second gateway based at least in part on the reception of acknowledgement messages by the second gateway (see Somekh paragraph 228 when gateway 36B receives packet before the connection establishment negotiation stage on network is completed, gateway optionally waits to the end of the negotiation stage before transmitting frame). (f) transmitting the messages from the second gateway to the first gateway (see Somekh paragraph 230 gateway 36B transmitting to gateway 36A a packet which reports the delay due to network being still in the connection establishment negotiation stage).

Somehk disclose all the subject matter of the claimed invention with the exception of: • Pause message

Rom from the same or similar fields of endeavor teaches the use of: Pause frame is provided to an information packet source by a downstream destination to inhibit transmission of information packets such as information frames by the information packet source to the downstream destination for a specified period of time (see Rom col. 5 lines 8-12).

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the pause frame as taught by Rom in modem relay over packet based network of Somekh in order to enhance system efficiency by implementing flow control and providing a control signal (see Rom col. 1 line 51 - col. 2 line 6).

Regarding claim 11, Somekh teaches further comprising the step of: (g) transmitting the pause messages from the first gateway to the plurality of data sources

(see Somekh paragraph 228 gateway 36A repeatedly transmits frames with guess values to modem 32A in order to stall the connection on the network and figure 11 illustrate more that one customers terminals).

Regarding claim 12, Somekh teaches software (see Somekh paragraph 261 software) and step (a) is performed by a plurality of sending tasks created by the data sources (see Somekh paragraph 258 a plurality of customers, and transmit to each other signals they receive on their twisted pairs and figure 11 box 524).

Regarding claim 14, Somekh teaches software (see Somekh paragraph 261 software) and the first gateway includes an input task and an output task, the second gateway includes an input task and an output task, step (b) is performed by the output task of the first gateway (see Somekh paragraph 217 data signals received by gateways 36a and 36b are optionally forwarded to the other gateway in data packets), steps (c) and (e) are performed by the input task of the second gateway (see Somekh paragraph 217 data signals received by gateways 36a and 36b are optionally forwarded to the other gateway in data packets), and step (f) comprises transmitting the pause messages from the output task of the second gateway to the input task of the first gateway (see Somekh paragraph 218 gateway optionally notify each other on reception of a break frame by transmitting a break packet which states the reception of the break frame).

Regarding claim 16, Somekh teaches software (see Somekh paragraph 261 software) and further comprising the steps of: (g) sending messages with data package transfer information from the data sources to the first gateway (see Somekh paragraph

258 a plurality of customers, and transmit to each other signals they receive on their twisted pairs and figure 11 box 524); (h) sending a message with the data package transfer information from the first gateway to the second gateway (see Somekh paragraph 217 data signals received by gateways 36a and 36b are optionally forwarded to the other gateway in data packets); (i) sending messages with the data package transfer information from the second gateway to the data destinations (see Somekh figure 14 box 812 and paragraph 217); and (j) checking the data package transfer information at the data destinations (see Somekh paragraphs 291 and 293).

Regarding claim 17, Somekh teaches a system (see Somekh paragraph 130) for storing and transferring data, the system comprising: • a first gateway coupled to the data sources (see Somekh figure 11 box 524 customers): • a second gateway coupled to the first gateway (see Somekh figure 2 gateways box 36a and 36b); and • a plurality of data destination coupled to the second gateway (see Somekh figure 14 box 812 computers); where (a) data packages are transmitted (see Somekh paragraph 217 data packets) from a plurality of data sources (see Somekh figure 11 box 524) to the first gateway (see Somekh paragraph 217 gateway and figure 7 box 36a); (b) the data packages are transmitted from the first gateway to the second gateway (see Somekh paragraph 217 data signals received by gateways 36a and 36b are optionally forwarded to the other gateway in data packets); (c) the data packages are transmitted from the second gateway to a plurality of data destinations (see Somekh figure 14 box 812 and paragraph 217); (d) acknowledgement messages are transmitted from the data destinations to the second gateway (see Somekh paragraph 226 modem 32b will

respond with frames to each frame transmitted by gateway); (e) generating messages (see Somekh paragraph 230 a packet which reports the delay due to network being still in the connection establishment negotiation stage) at the second gateway and reception of acknowledgement messages by the second gateway based at least in part on the reception of acknowledgement messages by the second gateway (see Somekh paragraph 228 when gateway 36B receives packet before the connection establishment negotiation stage on network is completed, gateway optionally waits to the end of the negotiation stage before transmitting frame). (f) transmitting the messages from the second gateway to the first gateway (see Somekh paragraph 230 gateway 36B transmitting to gateway 36A a packet which reports the delay due to network being still in the connection establishment negotiation stage).

Somehk disclose all the subject matter of the claimed invention with the exception of: • Pause message

Rom from the same or similar fields of endeavor teaches the use of: Pause frame is provided to an information packet source by a downstream destination to inhibit transmission of information packets such as information frames by the information packet source to the downstream destination for a specified period of time (see Rom col. 5 lines 8-12).

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the pause frame as taught by Rom in modem relay over packet based network of Somekh in order to enhance system efficiency by implementing flow control and providing a control signal (see Rom col. 1 line 51 - col. 2 line 6).

Regarding claim 19, Somekh teaches modem (see Somekh paragraph 130) and further comprising the step of: (g) transmitting the pause messages from the first gateway to the plurality of data sources (see Somekh paragraph 228 gateway 36A repeatedly transmits frames with guess values to modem 32A in order to stall the connection on the network and figure 11 illustrate more that one customers terminals). Regarding claim 20, Somekh modem (see Somekh paragraph 130) and teaches step (a) is performed by a plurality of sending tasks created by the data sources (see Somekh paragraph 258 a plurality of customers, and transmit to each other signals they receive on their twisted pairs and figure 11 box 524).

Regarding claim 22, Somekh modem (see Somekh paragraph 130) and teaches the first gateway includes an input task and an output task, the second gateway includes an input task and an output task, step (b) is performed by the output task of the first gateway (see Somekh paragraph 217 data signals received by gateways 36a and 36b are optionally forwarded to the other gateway in data packets), steps (c) and (e) are performed by the input task of the second gateway (see Somekh paragraph 217 data signals received by gateways 36a and 36b are optionally forwarded to the other gateway in data packets), and step (f) comprises transmitting the pause messages from the output task of the second gateway to the input task of the first gateway (see Somekh paragraph 218 gateway optionally notify each other on reception of a break frame by transmitting a break packet which states the reception of the break frame).

Regarding claim 24, Somekh teaches modem (see Somekh paragraph 130) and further comprising the steps of: (g) sending messages with data package transfer

information from the data sources to the first gateway (see Somekh paragraph 258 a plurality of customers, and transmit to each other signals they receive on their twisted pairs and figure 11 box 524); (h) sending a message with the data package transfer information from the first gateway to the second gateway (see Somekh paragraph 217 data signals received by gateways 36a and 36b are optionally forwarded to the other gateway in data packets); (i) sending messages with the data package transfer information from the second gateway to the data destinations (see Somekh figure 14 box 812 and paragraph 217); and (j) checking the data package transfer information at the data destinations (see Somekh paragraphs 291 and 293).

2. Claims 2, 7, 10, 15, 18, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Somekh and Rom further in view of Janakiraman et al., hereinafter Janakiraman, (2004/0196785).

Regarding claims 2 and 7, Somekh and Rom disclose all the subject matter of the claimed invention with the exception of: • the first gateway includes a mailbox and an output task, the data packages are transmitted to the mailbox in step (a), and the output task retrieves data packages stored in the mailbox. • (g) transmitting acknowledgement messages from the first gateway to the data sources; and (h) counting the acknowledgement messages received at each data source.

Janakiraman from the same or similar fields of endeavor teaches the use of packet buffer and packet sending process, that packet have been buffered, then the

process attempts to send these packets, and NumAckPending which if the packet can be sent, then NumAckPending is increment (see Janakiraman paragraphs 27 and 28),

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the packet buffer and packet sending process as taught by Janakiraman in the modified modem relay over packet based network of Somekh and Rom in order to reduce the utilization of the network fabric (see Janakiraman paragraph 6).

Regarding claims 10 and 15, Somekh and Rom teaches software (see Somekh paragraph 261 software) and discloses all the subject matter of the claimed invention with the exception of: • the first gateway includes a mailbox and an output task, the data packages are transmitted to the mailbox in step (a), and the output task retrieves data packages stored in the mailbox. • (g) transmitting acknowledgement messages from the first gateway to the data sources; and (h) counting the acknowledgement messages received at each data source.

Janakiraman from the same or similar fields of endeavor teaches the use of packet buffer and packet sending process, that packet have been buffered, then the process attempts to send these packets, and NumAckPending which if the packet can be sent, then NumAckPending is increment (see Janakiraman paragraphs 27 and 28),

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the packet buffer and packet sending process as taught by Janakiraman in the modified modem relay over packet based network of Somekh and

Rom in order to reduce the utilization of the network fabric (see Janakiraman paragraph 6).

Regarding claims 18 and 23, Somekh and Rom teaches modem (see Somekh paragraph 130) and discloses all the subject matter of the claimed invention with the exception of: • the first gateway includes a mailbox and an output task, the data packages are transmitted to the mailbox in step (a), and the output task retrieves data packages stored in the mailbox. • (g) transmitting acknowledgement messages from the first gateway to the data sources; and (h) counting the acknowledgement messages received at each data source.

Janakiraman from the same or similar fields of endeavor teaches the use of packet buffer and packet sending process, that packet have been buffered, then the process attempts to send these packets, and NumAckPending which if the packet can be sent, then NumAckPending is increment (see Janakiraman paragraphs 27 and 28),

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the packet buffer and packet sending process as taught by Janakiraman in the modified modem relay over packet based network of Somekh and Rom in order to reduce the utilization of the network fabric (see Janakiraman paragraph 6).

3. Claims 5, 13, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Somekh and Rom in view of Lindhorst-ko et al. (US2002/0075873).

Regarding claim 5, Somekh and Rom disclose all the subject matter of the claimed invention with the exception of: (g) adding sequence identifiers to the data packages in step (a); (h) checking the sequence identifiers added in step (g) at the first gateway; (i) adding sequence identifiers to the data packages in step (c); and (j) checking the sequence identifiers added in step (i) at the data destinations.

Lindhorst-ko et al. from the same or similar fields of endeavor teaches the use of each data packets for transmission is tagged with a sequence number by the source node. The destination node receives the data packets transmitted over the paths, and reconstructs the traffic from the received data packet (see Lindhorst-ko et al. paragraph 35 and 36).

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the tagging data packets with a sequence number, and reconstructing the traffic from the received data packet as taught by Lindhorst-ko et al. in the modified modem relay over packet based network of Somekh and Rom in order to enhance reliability and implement and is scalable for selectable degrees of reliability against network faults (see Lindhorst-ko et al. paragraphs 3 and 4).

Regarding claim 13, Somekh and Rom teaches software (see Somekh paragraph 261 software) disclose all the subject matter of the claimed invention with the exception of: (g) adding sequence identifiers to the data packages in step (a); (h) checking the sequence identifiers added in step (g) at the first gateway; (i) adding sequence identifiers to the data packages in step (c); and (j) checking the sequence identifiers added in step (i) at the data destinations.

Lindhorst-ko et al. from the same or similar fields of endeavor teaches the use of each data packets for transmission is tagged with a sequence number by the source node. The destination node receives the data packets transmitted over the paths, and reconstructs the traffic from the received data packet (see Lindhorst-ko et al. paragraph 35 and 36).

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the tagging data packets with a sequence number, and reconstructing the traffic from the received data packet as taught by Lindhorst-ko et al. in the modified modem relay over packet based network of Somekh and Rom in order to enhance reliability and implement and is scalable for selectable degrees of reliability against network faults (see Lindhorst-ko et al. paragraphs 3 and 4).

Regarding claim 21, Somekh and Rom teaches a modified modem a modem (see Somekh paragraph 130) and disclose all the subject matter of the claimed invention with the exception of: (g) adding sequence identifiers to the data packages in step (a); (h) checking the sequence identifiers added in step (g) at the first gateway; (i) adding sequence identifiers to the data packages in step (c); and (j) checking the sequence identifiers added in step (i) at the data destinations.

Lindhorst-ko et al. from the same or similar fields of endeavor teaches the use of each data packets for transmission is tagged with a sequence number by the source node. The destination node receives the data packets transmitted over the paths, and reconstructs the traffic from the received data packet (see Lindhorst-ko et al. paragraph 35 and 36).

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the tagging data packets with a sequence number, and reconstructing the traffic from the received data packet as taught by Lindhorst-ko et al. in the modified modem relay over packet based network of Somekh and Rom in order to enhance reliability and implement and is scalable for selectable degrees of reliability against network faults (see Lindhorst-ko et al. paragraphs 3 and 4).

(10) Response to Argument

Appellant has itemized the arguments traversing the rejections of the appealed claims, each of which will be treated in turn.

Appellant argues in page 7 paragraph 1, that,

A. The Final Office Action's combination of Somekh and Rom does not teach e)generating pause messages at the second gateway based at least in part on the reception of acknowledgement messages by the second gateway or (f) transmitting the pause messages from the second gateway to the first gateway, as required by independent claims 1, 9, and 17.

However, Examiner respectfully disagrees with the Appellant's assertion. Somekh in view of Rom do indeed teach the cited limitations. Specifically, Somekh teaches

(e) generating messages (see Somekh paragraph 230, gateway 36B transmitting to gateway 36A a packet which reports the delay due to network 34B being still in the connection establishment negotiation stage),

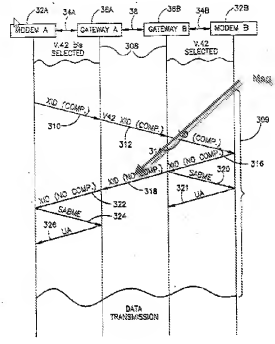

FIG.9C

at the second gateway (gateway 36B above) and reception of acknowledgement messages by the second gateway based at least in part on the reception of acknowledgement messages by the second gateway (see Somekh paragraph 228 when gateway 36B receives packet before the connection establishment negotiation stage on network is completed, gateway optionally waits to the end of the negotiation stage before transmitting frame)

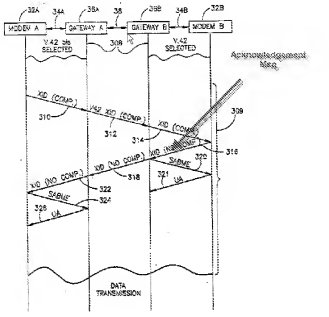

FIG.9C

(f) transmitting the messages from the second gateway to the first gateway (see Somekh paragraph 230 gateway 36B transmitting to gateway 36A a packet which

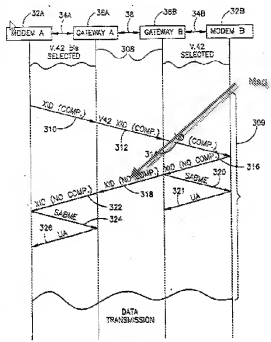

FIG.9C

reports the delay due to network being still in the connection establishment negotiation stage).

Somehk disclose all the subject matter of the claimed invention with the exception of "Pause message". Rom from the same or similar fields of endeavor teaches the use of: Pause frame is provided to an information packet source by a downstream destination to inhibit transmission of information packets such as information frames by the information packet source to the downstream destination for a specified period of time (see Rom col. 5 lines 8-12, A PAUSE frame is provided to an information packet source by a downstream destination to inhibit transmission of information packets such as information frames by the information packet source to the downstream destination for a specified period of time. In one embodiment, the PAUSE

frame contains a PAUSE opcode field and a time parameter field which contains a time parameter specifying an amount of time (in units of 64 bytes transmission time on a specified link) that an upstream information packet source must hold its transmission activity).

Therefore, Somekh in view of Rom does indeed teach the cited limitations.

Appellant argues that (page 8 paragraph 1) *the Final Office Action made one argument regarding the sequence of events in Somekh that it regarded as teaching elements (e) and (f) of the instant claims. Final Office Action at 3; The Advisory Action changed that argument and identified another sequence of events.*

However, Examiner respectfully disagrees with Appellant's assertion. Examiner has illustrated additional paragraph of the prior art (in advisory action, see below) that further satisfies the cited limitations. The cited paragraph of the prior art in advisory action is not a new message flow, rather further illustration of the existing message flow of figure 9c. The Advisory action stated:

> However, Examiner respectfully disagrees with the Applicant's assertion. The cited prior art do indeed teach the cited limitations. Specifically, Somekh further teaches in figure 9C, paragraph 0227, in some embodiments of the invention, when gateway 36B finally receives packet 312, it transmits a frame 314 with values taken from packet 312. When gateway 36B receives a frame 316 generated responsive to this frame 314, it transmits packet 318 to gateway 36A and transmits response frame 320 to modem 32B.

Therefore, Examiner respectfully disagrees with Appellant's assertion that the Advisory Action changed the argument of Final Rejection and identified another sequence of events. Examiner respectfully further submits that "the prior art's mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise

discourage the solution claimed.." In re Fulton, 391 F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004).

Appellant argues (page 8, last paragraph) that *Somekh uses Fig. 9C to describe several different circumstances. The first circumstance, described in Somekh [0226], occurs when "more than a predetermined time passes between the end of the connection establishment negotiation stage on network 34B and gateway 34B did not yet receive packet 312." The second circumstance, described in Somekh [0227], occurs when "gateway 36B receives packet 312 before the connection establishment negotiation stage on network 34B is completed." Those two circumstances were the bases of the Final Office Action's argument regarding elements (e) and (f) of independent claims 1, 9, and 17. Applicant refuted those arguments in its response to the Final Office Action and the Advisory Action did not repeat them.*

However, Examiner respectfully disagrees with Appellant's argument.

Firstly, paragraph 0226, was not used for rejection of claims. Therefore, Appellant's alleged "*first circumstance, described in Somekh [0226],occurs when "more than a predetermined time passes between the end of the connection establishment negotiation stage on network 34B and gateway 34B did not yet receive packet 312"* is not directly relevant for the claim rejection.

Secondly, paragraphs [0224] through [0236] are all related to Figure 9c. The message flow is same for all the scenarios described in these paragraphs. The message flow of figure 9c is as follows:

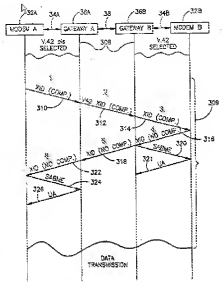

FIG.9C

1) Modem A sends message 310 to Gateway A,
2) Gateway A sends 312 message to Gateway B,
3) Gateway B sends 314 to Modem B,
4) Modem B responses with message 316 to Gateway B,
5) Gateway B responses with 318 to Gateway, and
6) Gateway A responses with 322 to Modem A.

The above message flow applies to all the different circumstances described within paragraphs [0224]-[0236]. As such, Examiner respectfully states that the message flow is common for any circumstances within paragraphs [0224]-[0236], and that, the different circumstances did not warrent separate message flow. The basic concept of the six steps (1-6) illustrated above is valid for Appellant's alleged first circumstances as well as Appellant's alleged second circumstances. However, Appellant's alleged first circumstances are not relevant for the claim rejection. Furthermore, Examiner respectfully submits that "the prior art's mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the

solution claimed.." In re Fulton, 391 F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004)

Appellant further argues (page 9, second paragraph) that *the Advisory Action relies on a third circumstance, described in Somekh [0227], in which "gateway 36B finally receives packet 312." The third circumstance occurs when the problem addressed in the first circumstance is corrected by the receipt of packet 312 by gateway 36B. Thus, Somekh [0227] describes the "normal" flow of communications, i.e., one that is not concerned with Somekh's "connection establishment negotiation stage." In those circumstances, the pause message required by elements (e) and (f) of independent claims 1, 9, and 17 is not needed, even if such a message is taught by Rom.*

However, Examiner respectfully disagrees with Appellant's assertion.

Firstly, Appellant's alleged feature "*second circumstance, described in Somekh [0227], occurs when "gateway 36B receives packet 312 before the connection establishment negotiation stage on network 34B is completed"* and Appellant's alleged feature "*third circumstance occurs when the problem addressed in the first circumstance is corrected by the receipt of packet 312 by gateway 36B; thus, Somekh [0227] describes the "normal" flow of communications, i.e., one that is not concerned with Somekh's "connection establishment negotiation stage"* are both being referred by the Appellant to be found In the same paragraph, i.e. Somekh [0227]. Somekh paragraph [0227] states:

> **[0227]** In some embodiments of the invention, when gateway **36**B finally receives packet **312**, it transmits a frame **314** with values taken from packet **312**. When gateway **36**B receives a frame **316** generated responsive to this frame **314**, it transmits packet **318** to gateway **36**A and transmits response frame **320** to modem **32**B. Optionally, if the values in the received packet **312** are equal to the guess values in repeatedly transmitted frames **314**, gateway **36**B transmits response frame **320** and packet **318** responsive to receiving packet **312**.

Examiner is unable to find the basis for Appellant's argument regarding "*third circumstance occurring when the problem addressed in the first circumstance is corrected by the receipt of packet 312 by gateway 36B".*

Examiner is also unable to find the basis for Appellant's argument regarding *Somekh [0227] describing the "normal" flow of communications, i.e., one that is not concerned with Somekh's "connection establishment negotiation stage".*

Specifically, Examiner is unable to find in paragraph [0227] Appellant's alleged relationship between "*second circumstance, described in Somekh [0227], occurs when "gateway 36B receives packet 312 before the connection establishment negotiation stage on network 34B is completed"* and Appellant's alleged third circumstances *"normal" flow of communications, i.e., one that is not concerned with Somekh's "connection establishment negotiation stage."*

Nowhere, in paragraph [0227], the word "normal" can be found, let alone the alleged feature *"normal" flow of communications, i.e., one that is not concerned with Somekh's "connection establishment negotiation stage.* Similarly, nowhere in paragraph [0027] Appellant's alleged feature "*third circumstance occurring when the problem*

addressed in the first circumstance is corrected by the receipt of packet 312 by gateway 36B" can be found.

Finally, as described earlier, paragraphs [0224]-[0236] are all related to Figure 9c. The message flow is same for all the scenarios described in these paragraphs. The basic message flow is as follows:

1) Modem A sends message 310 to Gateway A,
2) Gateway A sends 312 message to Gateway B,
3) Gateway B sends 314 to Modem B,
4) Modem B responses with message 316 to Gateway B,
5) Gateway B responses with 318 to Gateway, and
6) Gateway A responses with 322 to Modem A.

As mention earlier, the above message flow applies to all the different circumstances described within paragraphs [0224]-[0236]. As such, Examiner respectfully states that the message flow is common for any circumstances within paragraphs [0224]-[0236], and that, the different circumstances do not warrant separate message flow. The basic concept of the six steps (1-6) illustrated above is valid for Appellant's alleged second circumstances as well as Appellant's alleged third circumstances.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view

of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

Therefore, Examiner respectfully disagrees with Appellant's assertion that (see page 9, last paragraph) *the Final Office Action's combination of Somekh and Rom does not render independent claims 1, 9, and 17 obvious and those claims are patentable; claims 3, 4, 6, 8, 11-12, 14, 16, 19, 20, 22, and 24 depend from one of claims 1, 9, and 17 and are patentable for at least the same reasons.*

Appellant argues in page 10 paragraph 1, that,

B. The Final Office Action's combination of Somekh, Rom, and Janakiraman does not render claims 2, 7, 10, 15, 18, and 23 obvious for the same reasons.

Appellant further argues that *Final Office Action's combination of Somekh and Rom is missing elements of independent claims 1, 9, and 17. The Final Office Action's combination of Somekh and Rom is missing the same elements in claims 2, 7, 10, 15, 18, and 23. The Final Office Action does not argue that Janakiraman provides the missing elements. Therefore, the Final Office Action's combination of Somekh, Rom and Janakiraman would be missing the same elements.*

However, Examiner respectfully disagrees with Appellant's assertion. Examiner has clearly shown that Somekh and Rom teach all the elements of independent claims 1, 9 and 17. Therefore, it is for the same reasons 2, 7, 10, 15, 18, and 23 are not allowable over cited prior art.

Appellant argues in page 10 last paragraph, that,

C. The Final Office Action's combination of Somekh, Rom, and Lindhorst-ko does not render claims 5, 13, and 21 obvious for the same reasons.

Appellant further argues that Final Office Action's combination of Somekh and Rom is missing elements of independent claims 1, 9, and 17. The Final Office Action's combination of Somekh and Rom is missing the same elements of claims 5, 13, and 21. The Final Office Action does not argue that Lindhorst-ko provides the missing elements. Therefore, the Final Office Action's combination of Somekh, Rom and Lindhorst-ko would be missing the same elements.

However, Examiner respectfully disagrees with Appellant's assertion. Examiner has clearly shown that Somekh and Rom teach all the elements of independent claims 1, 9 and 17. Therefore, it is for the same reasons 5, 13, and 21 are not allowable over cited prior art.

For the above reasons, Honorable Board, it is believed that the rejections should be sustained.

(11) Related Proceedings Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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